IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 166 of 1979
With
FIRST APPEAL No. 167 of 1979
With
CROSS OBJECTION No. 38 of 2006
With
CROSS OBJECTION No. 18 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESANA DISTRICT COLLECTOR AND ANOTHER
Versus
DASANMAL HEMANDAS AND OTHERS

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Appearance :
MR ND GOHIL, AGP for Appellants.
MR AH MEHTA for Respondent(s) : 1 - 3,5 - 8, 11,13 - 17,19 - 20, 20.2.2, 20.2.3, 20.2.4, 20.2.5, 20.2.6, 20.2.7,20.2.8
MR AH MEHTA for Respondent(s) : 4.2.1, 4.2.2, 4.2.3, 4.2.4, 9.2.1,9.2.2 - 10, 12.2.1, 12.2.2, 12.2.3, 12.2.4, 12.2.5, 12.2.6, 18.2.1, 18.2.2, 18.2.3, 18.2.4, 18.2.5, 18.2.6, 18.2.7, 18.2.8, 18.2.9, 18.2.10, 21,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 11/07/2006

ORAL JUDGMENT

Both these First Appeals as well as cross-objections are directed against the judgement and order passed by learned Assistant Judge, Mehsana, dated 28th April, 1978 delivered in Land Acquisition Reference No.36/1975 and Land Acquisition Reference No.37/1975. So far as First Appeal No.166/1975 is concerned, the same is filed against the judgement delivered in Land Acquisition Reference No.36/1975. So far as First Appeal No.167/1979 is concerned, the same is filed against the judgement and order delivered in Land Acquisition Reference No.37/1975. So far as cross-objections No.38/2006 is concerned, the same is filed in First Appeal No.166/1979 and so far as Cross-objections No.18/2006 is concerned, the same is filed in First Appeal No.167/1979. It seems that even though the cross-objections were filed within time, the office has given numbers to the said cross-objections only recently.

The present appeals are filed on behalf of the District Collector, Mehsana and Additional Special Land Acquisition Officer, Mehsana, challenging the judgement and order delivered by the learned Judge of the Reference Court in Land Acquisition Reference No.36/1975 and Land Acquisition Reference No.37/1975. Since the claimants were also not satisfied with the judgement and order passed by the learned Judge of the Reference Court, the respondents – claimants have also filed cross-objections. On behalf of the Special Land Acquisition Officer, proceedings were initiated under the Land Acquisition Act for acquiring part of Survey No.285 of Vijapur town, admeasuring 0 Hectare, 48 Are, 56 sq.mtrs., which belonged to one Dasanmal Hemandas and 20 others. Similarly, part of Survey No.285 of Vijapur town being 17 Are and 20 sq.mts. was also acquired, which belonged to Patel Mangalbhai Dahyabhai.

The land in question was sought to be acquired on behalf of Vijapur Agricultural Produce Market Committee, for the purpose of extension of the market yard. For the purpose of acquiring the land in question, notification under Section 4 of the Act was issued on 14-10-1970, which was published in the Government Gazette on 19-11-1970. Individual notices were also served upon the interested persons. Notification under Section 6 was issued on 5-7-1973, which was published in the Government Gazette on 12-7-1973. The Special Land Acquisition Officer, after considering the evidence on record awarded the compensation at the rate of Rs.250/- per Are. Accordingly, award was declared on 29-6-1974. The claimants, however, were not satisfied by the same and, therefore, at their instance, references were made under Section 18 of the Act by the Special Land Acquisition Officer. Those references were numbered as Land Acquisition Reference No.36/1975 and Land Acquisition Reference No.37/1975 respectively. So far as Land Acquisition Reference No.36/1975 is concerned, the same was made at the instance of the claimant, Dasanmal Hemandas and others. So far as Land Acquisition Reference No.37/1975 is concerned, the same was made at the instance of the claimant – Patel Mangalbhai Dahyabhai.

Learned Judge of the Reference Court heard both the references and common evidence was recorded in both the aforesaid cases. Learned trial Judge by common judgement disposed of both the references by partly allowing the same.

Before the reference Court, the claimants demanded Rs.2,000/- per Are, however, the reference Court awarded Rs.1,000/- per Are. Accordingly, learned trial Judge has granted additional compensation of Rs.41,883/- in Land Acquisition Reference No.36/1975, and so far as

Land Acquisition Reference No.37/1975 is concerned, additional compensation of Rs.14,835/- is awarded.

Being aggrieved by the aforesaid order by which the learned trial Judge has granted additional compensation, on behalf of the Land Acquisition Officer, these two first appeals are filed. The claimants, who were not satisfied with the quantum of additional compensation have also filed cross-objections in both these appeals. Since common issue is involved in both the appeals, with the consent of the learned advocates, both these appeals as well as cross-objections are being decided by this common judgement.

On behalf of the appellants, learned AGP, Mr.Gohil submitted that the amount awarded by the Special Land Acquisition Officer was just and proper and the learned Judge should not have granted further compensation. As against that learned Senior Counsel, Mr.A.H.Mehta appearing for the claimants submitted that the learned trial Judge has not fixed correct market value of the lands in question and looking to the fertility of the land, compensation should have been fixed at the rate of Rs.2,000/- per Are.

Mr.Mehta, learned Senior Counsel appearing for the claimants submitted that in First Appeal No.167/1979, additional amount of compensation is only Rs.14,835/-. He further submitted that in series of judgement, Division Bench as well as learned Single Judge of this Court have taken the view that if the amount involved in First Appeal is small, this Court may not interfere with the order of the trial Court in First Appeals. He submitted that amount of additional compensation which is less than Rs.30,000/- is considered to be small amount.

However, since I have considered entire evidence on record, these appeals are required to be disposed of on merits, especially when cross-objections are also filed by the other side.

I have heard both the learned counsel in detail and I have also gone through the evidence on record.

Since the notification under Section 4 was published on 19-11-1970, the value of the land on the aforesaid date is required to be taken into account.

On behalf of the claimants, Ahmed Husein Kadar Husen,was examined at Exh.80. He was the owner of Survey No.267. He sold land admeasuring 50' x 50' to one Arjanbahi Patel, partner of Bhagwati Saw Mill in the year 1968 by registered sale deed. Certified copy of the same is produced at Exh.47. As per the evidence of said witness, the acquired land is situated at less than one kilometer distance from his land and in between there is a graveyard and on the northern side of the land of that witness there is a Government hospital, Gujarati School and Vandana Talkies.

On behalf of the claimants, one Dashrathlal Baldevdas, who was the owner of the acquired land is also examined at Exh.81. Said claimant Dashrathlal Baldevdas, has stated in his chief – examination that the land was converted to Non Agricultural land before 1963 and the land in question is in municipal limits. He also stated in his chief-examination that the land was subjected to 24 plots at the time, when it was converted to Non- Agricultural land. Each of the claimants were occupying different plots of the said land. Claimant stated in his evidence that the market price of the land in question was Rs.3,000/- per Guntha

at the relevant time. Said witness has stated that the land in question is at a prominent place, which is adjoining to the road and is near railway station. He has also stated that nearby the said land, there is a cinema talkies, a garden, market yard, railway station, S.T. bus stand and a Government Hospital. Said witness has also stated that the land in question had got all the potentiality for building purpose.

Learned trial judge has found that evidence of the said witness is reliable. On behalf of the claimants, reliance is also placed on Exh.72, which is village form No.7 & 12. As per the aforesaid village form, Survey No.285 is located in the declared city area. There is also a cinema talkies, namely, Vandana Talkies in the part of said Survey number. Aforesaid talkies is in existence since 1964-1965.

On behalf of the claimants, sale instances were produced at Exh.44, 45 and 46 by which the plots located in Survey No.290 were sold at the rate of Rs.1500/- per Are. Said sale instances took place in July 1969 and September 1970.

On behalf of the claimants, one Ramanlal was examined at Exh,95, who had purchased a plot in Survey No.290 from one Sakarchand Lallubhai on 7-7-1969. He purchased 18 X 50' of land, i.e., 900 sq.ft. for Rs.1500/- per Are. Sale instance in this behalf is produced at Exh.46.

Similarly, there is a sale instance at Exh.45. It is also purchased for the same price. Said land was purchased by one Heerachand Dwarkadas. He also purchased plot from same Survey No.290. Out of said Survey No.290, two plots were also purchased on 8-9-1970 by one Prajapati Shankarlal Khemchand, as per the sale instance at Exh.44,. Though, of course, vendor and vendee is not examined but the document is

produced on record.

On behalf of the acquiring body, one Manilal Mathurbhai Patel is examined at Exh.112. As per the evidence of said Manilal, he was serving as Secretary of the Market Committee of Vijapur since September 1971. Said witness has stated that the market yard of Vijapur consists of Survey No.286, 288, 288/1, and Survey No.289. Said witness has further stated that so far as Survey No.285 is concerned (acquired land), the same was acquired for the purpose of extension of market yard. Said witness has stated that Survey No.286 was purchased from one Atahusein Fajalhusein in 1958. It was purchased at the rate of Rs.2200 per vigha. Survey No.288 and 288/1 were obtained from Government by way of free grant. He has also stated that Survey No.289 was purchased from one Joshi Vitthal Damodar in 1958 at Rs.2200 per vigha. Said witness has also stated that so far as Survey No.285 is concerned, it originally belonged to one Joshi Vitthal Damodar and the claimant – Mangaldas purchased the same from him. Said witness has stated that on the southern side of Survey No.283 there is a graveyard. He has stated that Survey No.283 is adjoining to Survey No.284, which is of Atahusein Fajalhusein, and the same is a “padtar” land. He has stated that Survey No.267 cannot be compared with Survey No.285 as Survey No.285 is on back side of the market yard. He has stated that Survey No.290 is adjoining to Gamthan. In paragraph 10 of his cross-examination, said witness has admitted that the land under acquisition is at a prominent place and it was necessary to acquire said land for the purpose of extension of market yard. He has also stated that there is a grave yard adjoining to Survey No.284. He has also stated that on one side of that land, there is a dispensary.

On behalf of the acquiring body, President of a Cooperative

Housing Society, namely, Vitthalbhai Manibhai Desai, is examined at Exh.115. Said Vitthalbhai had purchased 4-11 Gunthas of land on 16-11-1970 of Survey No.324 for Rs.33,750/-by way of a registered sale deed. Said land was purchased from one Shekh Jafar Ali Dost Ali and others. Certified copy of the same is produced at Exh.49. Said witness has said in his chief-examination that the said land is located at about two fields away from the market yard of Vijapur. Said witness has admitted in his cross-examination that on his side, there is no business of market yard and his land is situated on the other side of the station. He further admitted that except oil mill, there is no other development or industry near to said Survey Number, however, he denied suggestion that he was given the land at a price lower than the market rate, as there was no development. Said witness has also stated in his cross-examination that he is not in a position to say whether Survey No.285 (acquired land) was more costly in 1970 in comparison to his land.

On behalf of the acquiring body, one Arjanbhai Mavjibhai was examined at Exh.116. He is the owner of Bhagwati Saw Mill located in Vijapur town. Said witness has stated that aforesaid saw mill is situated in Survey No.267. Out of that land of Survey No.267, he had purchased 28 gunthas of land from Sayedhusein Kadarhusein on 28-11-1976 for Rs.21,000/- by a registered sale deed, which is produced at Exh.117. Said witness also stated that in 1968, he had also purchased 2 gunthas of land from the said survey number from that very owner for Rs.6751/-. Said witness also stated that initially, he had hired 28 and 2 Gunthas at the rate of Rs.300/- from 12-12-1954. Accordingly, as per that evidence, he was a tenant of the land in question before he purchased the same. He has stated that 50 X 50 sq.mtr. of the land was converted into non – agricultural land. In his cross-examination, said witness has also admitted that he was a sitting tenant since 1954 and he was not

prepared to leave his possession and that he had no intention to vacate the said place. However, he denied the suggestion that because he was a sitting tenant, he was offered the land at a lesser price.

On behalf of the acquiring body, one Kanjibhai Jivabhai was examined at Exh.118. Said witness has stated in his evidence that he and other six persons purchased the land of Survey No.284 admeasuring 1 Acre and 17 Gunthas from one Atahusein Fajalhusein for Rs.10,672/-. He stated that the same was purchased for construction of houses. Sale deed in this behalf is produced on record at Exh.48. Said witness has admitted in his cross-examination that on one side of his land, there is a graveyard and there is no other development on his land. In his cross-examination said witness has stated that land under acquisition is better than his land. He stated that he and other purchasers were the occupiers and they have put up kaccha huts on the land, which they have purchased.

On behalf of the acquiring body, reliance was placed on Exh.50, wherein land of Survey No.403 was sold for Rs.600/- by Mangaldas to Shantibhai Patel, who is examined at Exh.105 .

Learned trial Judge after considering the oral as well as documentary evidence has granted Rs.1,000/- per Are as appropriate additional compensation. In this connection, it is required to be noted that it is not in dispute that the land in question is located at a prime place and nearby the said land there is Vandana Talkies and a garden. A market yard is also in existence since long near the land in question and for the purpose of its extension, land in question is sought to be acquired. The land in question is already converted to Non-Agricultural land since long and the same is also converted into small pieces of plots.

There is a S.T. bus stand, railway station as well as a a Government hospital nearby the land in question. This fact is clearly established in view of the witnesses examined by the claimants and the claimants are able to prove that the land in question was having potentiality for which high price can be received. Therefore, learned trial Judge has rightly found that it is not possible to compare the land in question with agricultural land, as the same had potentiality for construction of building. So far as evidence of the witness – Manilal Patel who was the Secretary of the Market Committee, is concerned, learned trial Judge has rightly found that sale instance relied upon by him, would be too stale and it cannot be considered as a comparable sale instance, as subsequently, the market yard was also constructed in the year 1963-64. Reference was made by said witness to Survey No.284, which is adjoining to a graveyard situated in Survey No.283. Similarly, other witnesses examined by the acquiring body at Exh.115, namely, Vitthalbhai Desai and Arjanbahi Mavjibhai at Exh.116, also cannot be relied upon for fixing the correct market price of the land, as they have also stated in their evidence that the land in question is prominently situated. Witness Vitthalbhai has clearly admitted that so far as Survey No.324 is concerned, there was no development on that side, except an Oil mill.

In my view, learned trial Judge has rightly not given more weightage to the evidence of Arjanbahi examined at Exh.116 (who is the owner of Bhagwati Saw Mill) to prove Exh.117, which is a sale instance of November, 1976 for Survey No.267, because the sale instance of the said land available on record, which is at Exh.47, is dated 3-10-1968, while Exh.117 is after a period of about six years from the date of notification under Section4 of the Act in the present case. Even otherwise, as per Exh.117, there was a restriction regarding transfer of

the said land and, therefore, it was a restricted land. So far as said document at Exh.48 is concerned, which is dated 14-8-1970, the witness Kanjibhai has clearly admitted that adjoining to Survey No.284, there is a graveyard, located in Survey No.283. He has also admitted that there is no development on that side and the same was an agricultural land.

Learned trial Judge has rightly not given weightage to said sale instance at Exh.50, which is dated 1-5-1971, as the said land is outside Nagar Panchayat area and some part of that land is agricultural land. Learned trial Judge has rightly not given much importance to the same and appropriate reasons are given in paragraph 20 of the judgement. So far as document at Exh.54 is concerned, the same is dated 1-11-1963 by which Mangalbhai sold Survey No.285 paiki 1 Acre, 8 Gunthas at the rate of Rs.100/- per guntha. However, from the evidence of the witnesses, it can be said that the same is sold to refugees as they wanted to settle and it seems to have been sold at a low rate, which may not be the market rate at the relevant time.

Considering the totality of the evidence on record, in my view, the fixation of market price at the rate of Rs.1,000/- per Are seems to be just, reasonable, appropriate and adequate, considering the time when notification under Section 4 of the Act was issued. In fact, some of the sale instances on which the claimants have relied suggest that the market value was even more than Rs.1,000/- per Are. The land in question was a plotted land and individual plots were purchased by the claimants. Its location is already discussed earlier in this judgement. It is required to be noted that in the instant case, land acquired is in the nature of small pieces of land, which is non-agricultural land. Learned trial Judge, after comparing the sale instances of certain plots at the rate of Rs.1,500/- per Are, has ultimately fixed Rs.1,000/- per Are after considering the totality

of the evidence on record. Learned trial Judge has considered sale instances nearer to the period of Section 4 notification. From various sale instances, it was found that the value of the comparable lands was within the rate of Rs.750/- to Rs.1500/- per Are, accordingly, learned trial Judge has fixed Rs.1,000/- per Are as compensation.

Considering the reasonings given by the learned trial Judge and considering the evidence as well as sale instances on record, in my view, judgement and order passed by the learned trial Judge is not required to be disturbed or interfered with by this Court in these appeals.

Considering the aforesaid aspect of the matter, I do not find any substance in these appeals as well as cross-objections. Accordingly, both these appeals as well as cross – objections are dismissed with no order as to costs.

(P.B.MAJMUDAR, J.)

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